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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,003	03/07/2005	Patrick H Wnek	R029 1726/US/1	3601

26158 7590 06/01/2005

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EXAMINER

LEUNG, PHILIP H

ART UNIT PAPER NUMBER

3742

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,003	<b>Applicant(s)</b> WNEK ET AL.	
	<b>Examiner</b> Philip H. Leung	<b>Art Unit</b> 3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-156 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☒ Claim(s) 21-135 and 142-156 is/are allowed.

6) ☒ Claim(s) 1-20 and 136-141 is/are rejected.

7) ☐ Claim(s) \_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 09 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:

    1. ☐ Certified copies of the priority documents have been received.

    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7-9-2004</u> .	6) <input type="checkbox"/> Other: ____

### DETAILED ACTION

1. The drawings filed 7-9-2004 are acceptable.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandberg et al (US 5,317,118), in view of Walter et al (US 5,217,768) (both cited by the applicant).

Brandberg discloses a microwave cooking device and method including a microwave package having a microwave interactive material 26 and an insulating material covering the food product from the oven environment except that the microwave interactive material does not surround the food as it uses a flat sheet of microwave susceptor adjacent the food (see figures 1-10 and col. 2, line 50 - col. 6, line 42). Walters shows a microwave package for microwave heating food including a microwave susceptor material completely surrounding the food to be heated (see Figures 2-11 and col. 4, line 34- col. 10, line 42). It would have been obvious to one

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of ordinary skill in the art at the time the invention was made to modify Brandberg to surround the food completely with the microwave susceptor so that the entire food product can be uniformly heated for a better cooked product, in view of the teaching of Walters. Clearly, to use a flat susceptor or a wrapping susceptor depends on the type of food being heated and the desired amount of browning effect on the food and would have been a matter of choice as taught by these two references. In regard to claims 8 and 9, Brandberg shows the claimed insulated microwave packaging material including superimposed inner and outer flexible materials 22 and 24 forming a plurality of inflating chambers C that is the claimed pockets.

4. Claims 136-141 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandberg et al (US 5,317,118), in view of Walter et al (US 5,217,768), as applied to claims 1-20 above, and further in view of Akervik (US 5,230,914) (cited by the applicant).

Brandberg combined with Walters does not explicitly show the use of instructions printed on the food package to direct the consumer to cover the product before cooking in the microwave oven. Akervik shows that it is a routine practice in the art of microwave food packages to include instructions printed on the food packages to direct the consumer to cover the dish of food with a kitchen wrap material before placing the dish in the microwave oven (see col. 1, lines 20-26). It would have been obvious to an ordinary skill in the art to further modify Brandberg combined with Walters to print instruction on the food package to direct the consumer how to properly prepare the food product for microwave heating in order to obtain a better and consistent cooking result, in view of the teaching of Akervik.

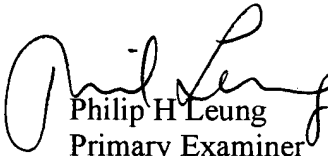
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5. Claims 21-135 and 142-156 are allowable because the prior art does not teach or fairly suggest the insulating microwave packaging material including a microwave interactive material and a multiple substrates forming a pattern of closed cells as specifically set forth in claims 21, 22, 64, 65 and 107. In regard to claim 145, the claimed microwave package including a carton and a pouch of microwave interactive material supported by the carton with the specific claimed structure is also not shown or suggested by the prior art. In regard to claim 149, the microwave cooking container having a first and second ends with an aperture, a microwave interactive body surrounding a food as specifically set forth in the claim is also not shown by the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 472-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Philip H Leung  
Primary Examiner  
Art Unit 3742

P.Leung/pl  
5-27-2005